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The information you provide, which in your opinion suggests that the "local fishing community" is "split" on this issue, is not accurate. To assume that a letter from the Maui Trailer Boat Club and a petition from the Hana community balances the sentiments of the entire state's fishing communities is a failure to objectively listen to your constituents. The Maui Trailer Boat Club does not want any new regulations as they do not believe overfishing is occurring (communicated to us in a January 11, 2006 letter). Regarding seasonal vs. area closures, a seasonal closure will likely impact the Maui Trailer Boat Club more than the proposed BRFA's, as only two closures are proposed off Maui (BRFA K- Pailolo Channel and BRFA L- near Hana). The proposed Pailolo Channel BRFA routinely experiences high winds and rough seas, making it only accessible on a limited basis. On the other hand, the proposed BRFA for the Hana seamounts would greatly affect that community, from which HDAR heard resounding opposition.

Your statement that commercial bottomfish fishermen Gary Dill and other Kewalo Basin commercial fishermen, as do likely all fishermen, prefer a single management approach is true. However, Mr. Dill stated at the 131st Council meeting (March 15, 2006) that he supports a seasonal closure as a viable management measure while the State of Hawaii develops a plan to adequately monitor and enforce the BRFA's, since the state is going to implement the BRFA's anyway. Mr. Dill also stated that he is not confident no-take marine protected areas (MPAs) will work for Hawaii's deep water bottomfish, given his observations that the fish move in and out of known habitat areas.

Seasonal closures affect everyone similarly, as opposed to a patchwork of area closures that have disproportionate effects on various communities. Hawaii's fishing communities are overwhelmingly in favor of seasonal closures, especially in lieu of the proposed BRFA's where there is no plan for adequate research, monitoring, and enforcement. In addition, there is wide spread fear among bottomfish fishermen that the BRFA's, without proper monitoring and enforcement, will not be effective and that overfishing will continue to occur, leading to even more severe restrictions on fishermen in the future.

2). The Science and Statistical Committee (SSC) is on record in support of the State's area closures, and endorsed a seasonal closure only as a temporary expedient.

Your letter fails to mention that the SSC recommendation supported the areas closures if demonstrated to be effective, and if so, should be phased in accordingly. Stating that the SSC recommendation does not represent any of the alternatives as written stretches the truth. From the transcripts of the 91st SSC meeting, it is clear that many members of the SSC supported a seasonal closure over the proposed BRFA's. As the SSC makes recommendations on consensus, the seasonal closure/area closure phase-in approach by the SSC was clearly a concession to the State of Hawaii—recognizing the state is going to implement the new BRFA's regardless—and an offering to appropriately meld the two management measures. The SSC further recommended that the Council and NMFS support the state in developing a comprehensive research and monitoring program for the BRFA's that should include both fishery dependent and fishery independent data collection methods.

Your letter mentions that the state is set to begin a more intensive monitoring program of its old and new closed areas using robotic cameras. We note that the Council has contributed significant funding for the development of automated camera bait stations (botcams) and continues to support its use to one day gather fishery independent data. However, botcam technology is still in development stages, and according to PIFSC stock assessment scientists, it is unlikely that its sole use would be effective in evaluating the BRFAs, and that fishery dependent monitoring of the current and proposed BRFAs would be needed.

The SSC and Council have a long involvement in the management of Hawaii's bottomfish fishery and historically have asked the state to take actions to improve the fishery when it was showing signs of stress. In 1998, the SSC and Council, albeit cautiously, supported the state's initiative to implement bottomfish area closures, as long as they were properly researched, monitored, and enforced. There are several recommendations on record by both the SSC and Council urging the state to take proper action to adequately evaluate the BRFAs. Unfortunately, this never occurred.

Your letter states that the Bottomfish Plan Team did not agree on any preferred alternative. The minutes of the plan team meeting as well as the recommendations state otherwise. In fact, the plan team recommendation states that the majority of the members support a seasonal closure, with minority support for area closures. You also mention in your letter that the Bottomfish Standing Committee declined to endorse the SSC recommendation. As demonstrated by the record of the 131st Council meeting, some Council members were uneasy with the SSC's recommendation as it strayed from their normal scientific recommendations into the realm of policy.

3). The State believes that its revised network of area closures is sufficient to meet federally mandated reduction in fishing reduction targets in this fishery, and that a seasonal closure is unnecessary and unduly burdensome.

Your letter states that "following the implementation of its first set of the area closures in 1999 (sic), both effort and catch in the MHI bottomfishery declined on the order of 25-30 percent." Fishing effort and catch in the fishery has been declining for nearly 25 years. Implying that the state's area closures were the driving force behind these declines is inaccurate and not supported by PIFSC scientists or Hawaii bottomfish fishermen. There are many other factors within the fishery one can attribute to the reduction in effort and catch, regardless of the existing area closures. Examples of other factors include: a) the retirement of several long-time bottomfish highliners out of Kewalo Basin around that period, b) revised catch reports, c) increased USCG commercial fishing vessel requirements, and d) increased construction jobs from an up-turned Hawaii economy. The point is that your statement connecting the reduction in catch and effort and the implementation of the BRFAs does not hold any scientific merit and is misleading.

The SSC did not reject HDAR's evaluation of the BRFAs to meet the necessary reduction in bottomfish mortality, nor did the SSC accept HDAR's evaluation. Furthermore, HDAR's analysis of the BRFAs has not been accepted by the Pacific Islands Fisheries Science Center (PIFSC) to meet the federal mandate, as several PIFSC staff indicate that there are problems with the method and assumptions used to predict mortality reductions. PIFSC has recently formed a

working group to provide an assessment of the implications of the proposed BRFA's as well as the proposed Penguin Bank and Middle Bank closure in terms of meeting the requirements to eliminate excess fishing mortality in the bottomfish fishery.

Regarding your statements about imports, sea food buyers are currently importing most of the foreign sourced bottomfish during the summer months, as this is historically when locally caught bottomfish supply is relatively low. Foreign bottomfish imports surpassed local bottomfish supply in 2001, and each year have steadily increased. During a seasonal closure, the locally caught bottomfish supply could be maintained from the NWHI bottomfish fishery. However, the state's position on the continuation, or lack thereof, of a sustainable NWHI bottomfish fishery leaves little confidence in your true beliefs regarding the importance or continuation of locally and sustainably-produced, fresh fish.

The Draft FMP Amendment that was distributed prior to the 131st Council meeting states that "under all alternatives HDAR's bottomfish management regime would remain in place." Later versions of the Amendment as well as the Draft Supplemental Environmental Impact Statement, say that "under all the alternatives, HDAR's bottomfish management regime may remain in place or could be changed by DLNR." These statements in the mentioned documents are purposely included to acknowledge the state's authority in managing marine resources within its jurisdiction; an authority to "go it alone" if the state sees fit. However, as you and I both know, bottomfish occur within both state and federal jurisdictions, and therefore, proper management coordination is the best approach.

Because no baseline studies were ever conducted on the BRFA's nor were they ever monitored over time, the federal overfishing determination for the fishery (based on 2003 data) assumes no benefit from the existing BRFA's. This highlights the notion that without proper baseline research and ongoing monitoring of the proposed BRFA's, the benefits of their purported value will never be accounted for in the federal stock assessments and annual evaluations.

4) *There is no peer reviewed scientific evidence to support seasonal closures.*

As experienced fisheries managers know, there exists decades of successful seasonal closure applications to manage modern fisheries throughout the world, and centuries of practiced seasonal closures to manage resources by indigenous Pacific islanders in ancient times. I am very disappointed that the state claims to have examined the scientific literature and "compiled" a list of 30 peer reviewed studies which demonstrate the effectiveness of area closures for long-lived species, of which the state asserts five are applicable to the Hawaii's deep-slope bottomfish fishery. The list you speak of is hardly compiled, as it is directly taken from:

Roberts, C.M. and J.P. Hawkins. 2000. *Fully-protected Marine Reserves: A Guide*. WWF Endangered Seas Campaign: University of York.

Comparing MPAs for shallow water, coral reef snappers and groupers, to Hawaii's deep slope complex of bottomfish is not appropriate given their differences in habitat preferences as well as life history characteristics such as movement patterns. Nowhere in this literature list does it mention that the MPAs in question were for an archipelagic multi-species stock complex that is

experiencing overfishing. For many species that are sessile or that do not stray from bottom habitat, MPAs are likely effective to increase species biomass within the closed areas. However, it is widely recognized that MPAs work only if they are of adequate size, in good locations, for certain species, and strictly enforced. There is growing literature that examines and discusses the appropriate use of no-take and multi-use MPAs. A true examination of the scientific literature would reveal that no-take MPAs are not a panacea for fisheries management, and when contemplating no-take MPAs, clear objectives should be developed in addition to comprehensive plans for research, monitoring, and enforcement. Currently, there is significant global debate on the effectiveness of no-take MPAs as a fisheries management tool for depleted fish populations, as well as debate on the socio-cultural implications of no-take MPAs.

The two major problems with no-take MPAs for deep water bottomfish in Hawaii are that: 1) we know little about bottomfish movement patterns¹ as well as life history characteristics, and 2) we know that current enforcement capability is inadequate. Given the unknowns of bottomfish movement and life history, the potential for larval and adult spillover, the enforceability of the closed areas, and the potential for significant displacement of effort into open areas, there are serious concerns about the effectiveness of the proposed BRFA on reducing bottomfish fishing mortality in Hawaii's deep-slope bottomfish stock complex.

Seasonal closures are widely used as a fishery management tool and are recognized as a simple method that does not require costly at-sea enforcement or aerial surveillance. Bottomfish fishing effort is not expected to significantly shift to open periods as there are only so many remaining calendar days available to fish. In addition, it is very difficult to fish for deep water bottomfish in windy or rough sea conditions, therefore, the weather also serves to limit effort during the open period.

Your letter states that the SSC, when asked directly on two separate occasions, could cite no peer reviewed paper that indicated that seasonal closures had been successful in managing tropical bottomfisheries. The SSC is comprised of fishery scientists that are experts in stock assessment, biology, statistical modeling, as well as economics and other social sciences. It is not the function of SSC members to respond to informal requests made during lengthy, and often confrontational diatribes by the HDAR Administrator.

5) The Office of Hawaiian Affairs does not support Alternative 3.

The Council did receive a letter from the Office of Hawaiian Affairs (OHA) stating its opposition to seasonal bottomfish closures as well as claiming that the Council was misappropriating Hawaiian ethics and knowledge. However, at a 10:00 a.m. meeting on April 12th, 2006 with OHA Board of Trustees Chairperson Haunani Apoliona, OHA Administrator Clyde Namu'o agreed to correct OHA's misstatement that the Council was misappropriating the Hawaiian language, culture and ethics in letters to the Council and DLNR. Mr. Namu'o also stated that OHA supports seasonal closures.

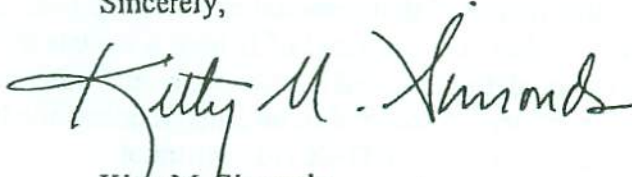
¹ From HDAR tagging studies, opakapaka have been found to travel between banks and deep water channels between islands.

Your statement that fishermen have been honoring the state's current area closures because they realize stocks have declined is again, inaccurate. Most fishermen have not violated the BRFA's because most are in general honorable people. However, as mentioned in many public meetings, several of the BRFA's have been poached, with fishermen reporting violations to DOCARE, but no enforcement action taken. Fisheries enforcement is confounded by inadequate funding and staffing levels, and given this reality a seasonal closure is the most enforceable of the alternatives considered. It seems strange that, as you mention in your letter, DLNR enforcement officers lack the ability to open coolers to verify if they contain bottomfish or not. As noted in several meetings including the Bottomfish Standing Committee and 131st Council meeting, probable cause could easily be established through appropriate lines of questioning. Moreover, relevant case law suggests that state natural resources officers do have the authority to open coolers if probable cause is established.

In conclusion, I'm terribly disappointed in the lack of coordination between the Council, National Marine Fisheries Service, and the State of Hawaii on this important fisheries management issue. It is our public duty to develop and implement creative, well-thought out, and balanced solutions to manage natural resources. Unfortunately of late, this seems to be the exception rather than the standard practice.

It is not the intention of the Council to unduly overburden Hawaii's bottomfish fishermen, nor to over-regulate the fishery. If PIFSC determines that the proposed BRFA's may effectively alleviate the excessive bottomfish fishing mortality in the main Hawaiian Islands, and comprehensive research, monitoring, and enforcement plans are developed, the Council welcomes the opportunity to re-visit this issue. The Council also looks forward to a continued dialogue and improved working relationship with the State of Hawaii on the management of shared marine resources.

Sincerely,



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Executive Director

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